

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DA'VETTA FLOWERS

PLAINTIFF

v.

No. 4:18-cv-577-DPM

KENDALL W. PENN, Major General,
Adjutant General for the State of Arkansas

DEFENDANT

AMENDED JUDGMENT

1. The Court resolved some of Da'Vetta Flowers's federal and state claims in a pretrial Order. The Court now enters judgment against Da'Vetta Flowers, and for Kendall W. Penn, on these claims: her discrimination claim about her June 2018 non-promotion; her retaliation claim about her October 2018 disciplinary; her retaliation claim about being placed on a performance improvement plan in April 2019; and her retaliation claim about her June 2019 low performance evaluation. These claims are dismissed with prejudice. Flowers's whistleblower claims under Arkansas law are dismissed without prejudice.

2. The Court held a jury trial in Little Rock from 7 December 2021 to 14 December 2021 on Flowers's race discrimination and retaliation claims based on her August 2017 non-promotion. The eight-person jury returned two unanimous verdicts, *Doc. 131*, which the Court attaches and incorporates.

3. Based on the jury's first verdict, the Court enters judgment for Da'Vetta Flowers on her race discrimination claim about her August 2017 non-promotion against Kendall W. Penn, in his official capacity, for \$133,804.58 in damages, pre-judgment interest at a rate of 0.28% compounded annually (\$1,631.54), post-judgment interest at a rate of 0.28%, and a reasonable attorney's fee and costs as may be allowed on later motion. FED. R. CIV. P. 54(d); 28 U.S.C. § 1920. The Court has that motion, as supplemented, under advisement and awaits Penn's supplemental response, which is now due 11 August 2022.

4. Based on the jury's second verdict, the Court enters judgment against Da'Vetta Flowers, and for Kendall W. Penn, on her retaliation claim about her August 2017 non-promotion. The retaliation claim is dismissed with prejudice.

5. The Court held a bench trial in Little Rock on 2 August 2022 on Flowers's motion for post-trial equitable relief. Based on the evidence received and arguments made, the Court enters judgment for Da'Vetta Flowers on her motion for post-trial equitable relief against Kendall W. Penn, in his official capacity, for front pay in the amount of \$21,487.82, plus a pay grade increase from her current pay grade to the midpoint GS12 pay grade, which is \$85,475.00 per year, effective immediately. The retroactive part of the front pay award (from the date of the jury's verdict until today) shall bear post-judgment interest at a rate of .28%. The Arkansas Military Department may make reasonable

additions to Flowers's job responsibilities to account for the pay increase. If the Human Resources Administrator position becomes available during the time that Flowers remains employed at the Department, the Department must place her in that position.

6. The Department must post this Amended Judgment in a conspicuous place at the facility where Flowers works, so her co-workers can see and read it, from 10 August 2022 until 8 November 2022.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

8 August 2022

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VERDICT FORM - RACE DISCRIMINATION

1. On Flowers's race discrimination claim against Penn, as submitted in Instruction No. 7, we find for:

U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
FILED

Flowers

DEC 14 2021

Penn

IN OPEN COURT
TAMMY H. DOWNS
By: *Tammy H. Downs*
DEPUTY CLERK

If you found for Flowers in Question 1, then answer Question 2. If you found for Penn in Question 1, then your deliberations on this verdict are done. Your foreperson should sign and date this form.

2. Has it been proved that the Department would have chosen not to promote Flowers regardless of her race?

Yes

No

If you answered "No" in Question 2, then answer Question 3 and Question 4. If you answered "Yes" in Question 2, then skip Question 3 and Question 4 and answer Question 5.

3. We find Flowers's lost wages and benefits through the date of this verdict to be:

\$ 105, 804.58

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4. We find Flowers's other monetary damages, excluding lost wages and benefits, to be:

\$ 28,000 ⁰⁰

If your answers to Question 3 and Question 4 are both "0", then you must award Flowers nominal damages of \$1.00 in Question 5.

If you entered a number greater than "0" in either Question 3 or Question 4, then your deliberations on this verdict are done. Skip Question 5.

5. We find Flowers's nominal damages to be \$_____, as submitted in Instruction No. 14.

Your foreperson should date and sign this verdict.

David T. Johnson
Foreperson

12/14/21 1600
Date/time

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VERDICT FORM - RETALIATION

1. On Flowers's retaliation claim against Penn, as submitted in Instruction No. 14, we find for:

Flowers

Penn

U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
FILED
DEC 14 2021
IN OPEN COURT
TAMMY H. DOWNS
By: *[Signature]*
DEPUTY CLERK

If you found for Flowers in Question 1, then answer Question 2 and Question 3. If you found for Penn, your deliberations are done. Your foreperson should sign and date this form.

2. We find Flowers's lost wages and benefits through the date of this verdict to be:

\$ _____

3. We find Flowers's other monetary damages, excluding lost wages and benefits, to be:

\$ _____

If your answers to Question 2 and Question 3 are both "0", then you must award Flowers nominal damages of \$1.00 in Question 4.

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If you entered a number greater than "0" in either Question 2 or Question 3, then your deliberations are done. Skip Question 4.

4. We find Flowers's nominal damages to be \$_____ as submitted in Instruction No. 14.

Your foreperson should date and sign this verdict.

Dwight Juvonen
Foreperson

12/14/21 1600
Date/time